

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

GIAVANA CARRILLO,

Defendant.

CASE NO. 8:09CR215

TENTATIVE FINDINGS

The Court has received the Second Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 142).¹ The government adopted the PSR (Filing No. 146). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties agreed in the plea agreement that the Defendant should be held accountable for at least 5 but less than 10 grams of a mixture or substance containing methamphetamine, resulting in the application of base offense level 16. The PSR, however, reflects a higher drug quantity resulting in base offense level 20. Defendant's objections are discussed below. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 16.

¹The Defendant's objections were filed before the submission of the Second Revised PSR. However, the sentencing was expedited at the request of one or more of the parties. The Court will not require the Defendant to refile its objections.

The Defendant also objects to the lack of a minor role reduction in ¶ 32. The objection will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to ¶ 53 of the PSR are granted;
2. The Defendant's objections to ¶ 32 will be heard at sentencing;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
6. If the parties need more than 30 minutes for sentencing, they should immediately contact Edward Champion and reschedule the hearing.

DATED this 5th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge